



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AP20

Third Party Billing for Medical Care Provided under Special Treatment Authorities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulations to clarify that VA will not bill third party payers for care and services provided by VA under certain statutory provisions, which we refer to as “special treatment authorities.” These special treatment authorities direct VA to provide care and services to veterans based upon discrete exposures or experiences that occurred during active military, naval, or air service. VA is authorized, but not required by law, to recover or collect charges for care and services provided to veterans for non-service-connected disabilities. This rule establishes that VA will not exercise its authority to recover or collect reasonable charges from third party payers for care and services provided under the special treatment authorities.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Joseph Duran, Director, Policy and Planning, VHA Office of Community Care (10D1A1), Veterans Health Administration,

Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (303-370-1637). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on November 22, 2017, VA proposed to amend its regulation concerning billing third party payers for health care received under its special treatment authorities. 82 FR 55547.

VA is authorized by law under 38 U.S.C. 1729 to recover or collect reasonable charges from third parties under certain situations for care and services provided for non-service-connected disabilities. VA does not have authority to recover or collect charges from third parties for care or services provided for service-connected disabilities.

Under the statutes referred to as the special treatment authorities, VA provides care and services to veterans for conditions and disabilities that are related to certain exposures or experiences during active military, naval, or air service, regardless of whether such condition or disability is formally adjudicated by the Veterans Benefits Administration (VBA) to be service-connected. These authorities are codified at 38 U.S.C. 1710(a)(2)(F) and (e), 1720D, and 1720E. These statutory provisions do not expressly refer to the conditions or disabilities resulting from such exposures or experiences as service-connected. Therefore, if veterans meet the eligibility criteria of these discrete categories in law, they receive the health care benefits enumerated in the special treatment authorities. A brief description of each of the special treatment authorities follows.

Subject to the availability of appropriations, the limitations found in 38 U.S.C. 1710(e)(2) and (3), and the definitions in 1710(e)(4), under section 1710(a)(2)(F), VA provides hospital care and medical services, and may furnish nursing home care, to veterans who were exposed to specified hazards or served under certain circumstances as identified in 38 U.S.C. 1710(e). The exposures include herbicide exposure, ionizing radiation, and certain chemical and biological weapons testing, and circumstances of service include service in the Southwest Asia theater during the Persian Gulf War and at Camp Lejeune during specified time periods. A more comprehensive list of the specific exposures and disabilities is located at 38 U.S.C. 1710(e).

Under 38 U.S.C. 1720D, VA may provide counseling and appropriate care and services to help veterans overcome psychological trauma, which in the judgment of a mental health professional employed by VA, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment that occurred while the veteran was serving on active duty, active duty for training, or inactive duty training.

Under 38 U.S.C. 1720E, VA is authorized to provide any veteran whose service records include documentation of nasopharyngeal radium irradiation treatments a medical examination, hospital care, medical services, and nursing home care that is needed for the treatment of any cancer of the head or neck that the Secretary finds may be associated with the veteran's receipt of those treatments in active military, naval, or air service. Additionally, notwithstanding the absence of such documentation, VA may provide such care to a veteran who served as an aviator in the active military, naval, or air service before the end of the Korean conflict or a veteran who underwent submarine training in active naval service before January 1, 1965.

The special treatment authorities do not require an adjudication of service-connection to establish eligibility for care. These veterans are eligible under those authorities for treatment of specific conditions, which although not adjudicated as service-connected, are treated as the practical equivalent for medical care purposes. Therefore, in the proposed rule, we proposed adding a new paragraph (a)(9) in § 17.101 to exclude from recovery or collections any reasonable charges from third parties for care and services provided under the special treatment authorities. VA provided a 60-day comment period, which ended on January 22, 2018. We received 2 comments on the proposed rule.

One commenter explained that he was born at Camp Lejeune and that he and his family members have illnesses that he believes are related to exposures while on the base. He questioned why he was denied eligibility for the Camp Lejeune family member program and stated that more people should be eligible for the program. While we are sympathetic to the commenter, this rulemaking only codifies VA's practice of not exercising its discretionary authority in section 1729 to recover or collect from a third party the cost of care and services provided under a special treatment authority, by creating an exception to 38 CFR 17.101. This comment is, therefore, beyond the scope of the rulemaking and we make no changes based on this comment.

The other commenter raised concerns about the commenter's claim for unspecified benefits and a subsequent court decision that are not related to this regulation. The comment is beyond the scope of this rulemaking and we make no changes based on this comment.

Based on the rationale set forth in the **SUPPLEMENTARY INFORMATION** to the proposed rule and in this final rule, VA is adopting the proposed rule as a final rule with no changes.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

Although this action contains provisions constituting collections of information at 38 CFR 17.101, under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3521), no new or proposed collections of information are associated with this final rule.

The information collection requirements for § 17.101 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900-0606.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601- 612. We are not imposing any new requirements that would have such an effect. Our standards almost entirely conform to

the existing statutory requirements and existing practices in the program. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by OMB, unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year To Date." This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.011 - Veterans Dental Care; 64.012 - Veterans Prescription Service; 64.013 - Veterans Prosthetic Appliances; 64.014 - Veterans State Domiciliary Care; 64.015 - Veterans State Nursing Home Care; 64.026 - Veterans State

Adult Day Health Care; 64.029 - Purchase Care Program; 64.033 - VA Supportive Services for Veteran Families Program; 64.034 - VA Grants for Adaptive Sports Programs for Disabled Veterans and Disabled Members of the Armed Forces; 64.035 - Veterans Transportation Program; 64.039 - CHAMPVA; 64.040 - VHA Inpatient Medicine; 64.041 - VHA Outpatient Specialty Care; 64.042 - VHA Inpatient Surgery; 64.043 - VHA Mental Health Residential; 64.044 - VHA Home Care; 64.045 - VHA Outpatient Ancillary Services; 64.046 - VHA Inpatient Psychiatry; 64.047 - VHA Primary Care; 64.048 - VHA Mental Health clinics; 64.049 - VHA Community Living Center; 64.050 - VHA Diagnostic Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellows, Travel, Transportation expenses, Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jacquelyn Hayes-Byrd, Acting Chief of Staff, Department of Veterans Affairs, approved this document on June 28, 2018, for publication.

Dated: July 2, 2018.

Consuela Benjamin,
Regulation Development Coordinator,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read in part as follows:

AUTHORITY: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

2. Amend § 17.101 by:

- a. Adding paragraph (a)(9).
- b. Revising the authority citation at the end of the section.

The addition and revision read as follows:

§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability.

(a) * * *

(9) Care provided under special treatment authorities. (i) Notwithstanding any other provisions in this section, VA will not seek recovery or collection of reasonable charges from a third party payer for:

(A) Hospital care, medical services, and nursing home care provided by VA or at VA expense under 38 U.S.C. 1710(a)(2)(F) and (e).

(B) Counseling and appropriate care and services furnished to veterans for psychological trauma authorized under 38 U.S.C. 1720D.

(C) Medical examination, and hospital care, medical services, and nursing home care furnished to veteran for cancer of the head or neck as authorized under 38 U.S.C. 1720E.

(ii) VA may continue to exercise its right to recover or collect reasonable charges from third parties, pursuant to this section, for the cost of care that VA provides to these same veterans for conditions and disabilities that VA determines are not covered by any of the special treatment authorities.

* * * * *

(Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1720D, 1720E, 1721, 1722, 1729)

[FR Doc. 2018-14573 Filed: 7/5/2018 8:45 am; Publication Date: 7/6/2018]